

### REMARKS

The amendment and remarks herein are in response to the Office Action mailed on June 4, 2007. Applicants gratefully acknowledge the Examiner's withdrawal of the previous rejections based upon 35 U.S.C. § 102 (b) and 35 U.S.C. § 103.

In the most recent Office Action, the Examiner has rejected all of the claims either (1) under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. US 2003/0044488 A1 or (2) under 35 U.S.C. § 103. The Examiner also has given various obviousness-type double patenting rejections in this case.

The 102(e) and 103 rejections will be addressed first. 35 U.S.C. § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

35 U.S.C. § 103(c) (2007). U.S. Patent Application Publication No. 2003/0044488 and the presently claimed invention were, at the time the presently claimed invention was made, owned by the same person (entity) or subject to an obligation of assignment to the same person (entity) -- Advanced Food Technologies, Inc. The assignment filed in both the present application and U.S. 2003/0044488 application are included with this response for the Examiner's convenience. Accordingly, Applicants respectfully submit that U.S. Patent Application Publication No. 2003/0044488, which the Examiner indicates is a 102(e) reference, cannot be used to make an obviousness rejection in this case.

The Examiner indicated that the cited Roskam reference, U.S. Patent Application Publication No. 2003/0044488 A1, was "silent to the type of dextrin in the coating as recited in claims 12, 13, 21, 36, and 38 and up to about 32% dextrin as recited in claim 38."

Accordingly, the Examiner rejected these claims as obvious over the combination of U.S. Patent Application Publication No. 2003/0044488 and Lenchin, et al., U.S. Patent 4,510,166. Applicants have amended the independent claims of the present application to require the type of dextrin, corn dextrin, in previously presented claims 12 and 36, for example. For the reasons discussed above, Applicants respectfully submit U.S. Patent Application Publication No. 2003/0044488 can not be used as a reference in making an obviousness rejection. Accordingly, Applicants respectfully submit that the previous 102(e) and 103 rejections have been overcome.

Next, Applicants respectfully traverse the rejections based upon obviousness-type double patenting over U.S. Patent Application Serial Nos. 10/682,673; 10/682,672; and 10/170,964 (now U.S. Patent 7,294,355 B2). In the most recent Office Action, the Examiner incorporated the rejections in the Office Action mailed January 26, 2006. Initially, Applicants note that claims 12-13, 31, and 36-38 were not provisionally rejected in view of 10/170,964 (now 7,294,355) in the most recent Office Action. Since Applicants have amended the pending claims to require corn dextrin, a limitation of, for example, previously presented claims 12 and 36, which were not provisionally rejected over this application, Applicants respectfully submit the rejection based upon the '355 patent has been overcome. Regarding the remaining provisional obviousness-type double patenting rejections, both those applications remain pending. Section 804 of the Manual of Patent Examining Procedure states:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The present application was filed on July 30, 2003. The 10/682,672 and 10/682,673 applications were both filed on October 9, 2003. All three applications claim priority to the same provisional

Applicants: Cheree L. B. Stevens et al.  
Appln No.: 10/629,991  
Page : 10

application, U.S. Patent Application Serial No. 60/417,295 filed on October 9, 2002. The present case was filed on July 30, 2003, before either of the two other pending applications, which were filed on October 9, 2003. Accordingly, Applicants respectfully submit that the remaining two provisional obviousness-type double patenting rejections should be withdrawn and the present application allowed to issue without a terminal disclaimer.


Applicants respectfully submit that Applicants have made an effort to place the present application in condition for allowance, and a notice to this effect is earnestly solicited. In the event there are any remaining formalities or other issues needing Applicants' assistance, Applicants request the Examiner to call the undersigned attorney.

Respectfully submitted,

CHEREE L. B. STEVENS, et al.

By: Price, Heneveld, Cooper,  
DeWitt & Litton, LLP

December 4, 2007  
Date

  
Todd A. Van Thomme  
Registration No. 44 285  
695 Kenmoor S.E.  
P.O. Box 2567  
Grand Rapids, MI 49501  
Phone: (616) 949-9610  
Facsimile: (616) 957-8196

TAV/dar

ASSIGNMENT

WHEREAS, Robert O. Roskam residing at 2760 Lake Dr., Grand Rapids, Michigan 49506; Cheree L. Stevens residing at 200 Cobblestone Lane, Idaho Falls, Idaho 83404; John F. Stevens residing at 200 Cobblestone Lane, Idaho Falls, Idaho 83404; and Joel R. Tinsley residing at 149 S. 1075 W., Blackfoot, Idaho 83221 (hereinafter referred to as Assignor), have invented certain new and useful improvements in SNACK/CONVENIENCE FOODS AND THE LIKE HAVING EXTERNAL AND/OR INTERNAL COATING COMPOSITIONS for which an application for United States Letters Patent was executed on even date herewith.

WHEREAS, Advanced Food Technologies, Inc. a corporation of the state of Michigan having a place of business at 2010 Jennie Lee Drive, Idaho Falls, Idaho 83404 (hereinafter referred to as Assignee), is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent that may be granted therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable considerations, Assignor hereby sells, assigns and transfers unto said Assignee the full and exclusive right, title and interest to the said invention in the United States and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted therefor in the United States and in any and all foreign countries and in and to any and all divisions, reissues, continuations, continuation-in-part, and extensions thereof including the full right to claim for any such applications the benefits of the International Convention.

Assignor hereby authorizes and requests the Patent Office Officials in the United States and in any and all foreign countries to issue any and all of said Letters Patent, when granted, to said Assignee as the owner of the entire right, title and interest in and to the same, for the sole use and behoof of said Assignee, its successors and assigns.

FURTHER, Assignor agrees to communicate to said Assignee or its representatives any facts known to Assignor respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation, continuation-in-part, substitution, renewal, and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to said Assignee, make all rightful oaths and generally do everything possible to aid said Assignee, its successors and assigns, to obtain and enforce proper protection for said invention in the United States and in any and all foreign countries.

IN TESTIMONY WHEREOF, we have hereunto set our hands on the date appearing next to our signature.

Witness:

[Signature]  
Shirley Carter  
Shirley Carter  
Shirley Carter

Inventor:

[Signature]  
Robert O. Roskam  
[Signature]  
Cheree L. Stevens  
[Signature]  
John F. Stevens  
[Signature]  
Joel R. Tinsley

Date:

5-31-02  
5/30/02  
5/30/02  
5/30/02

**ASSIGNMENT**

WHEREAS, Cheree L. B. Stevens, residing at 200 Cobblestone Lane, Idaho Falls, Idaho 83404, and Robert O. Roskam, residing at 2760 Lake Drive SE, Grand Rapids, Michigan 49506, respectively (hereinafter referred to as Assignors), have invented certain new and useful improvements in EXTERNAL COATING COMPOSITION FOR TOASTER PASTRIES AND OTHER PASTRY PRODUCTS, for which an application for United States Letters Patent was executed on even date herewith.

WHEREAS, Advanced Food Technologies, Inc., a corporation of the state of Michigan, having a place of business at 2010 Jennie Lee Drive, Idaho Falls, Idaho 83404 (hereinafter referred to as Assignee), is desirous of acquiring the entire right, title, and interest in and to said invention and in and to any Letters Patent that may be granted therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, for good and valuable considerations, Assignors hereby sell, assign, and transfer unto said Assignee the full and exclusive right, title and interest to the said invention in the United States and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted therefor in the United States and in any and all foreign countries and in and to any and all divisions, reissues, continuations, continuation-in-part, and extensions thereof including the full right to claim for any such applications the benefits of the International Convention.

Assignors hereby authorize and request the Patent Office Officials in the United States and in any and all foreign countries to issue any and all of said Letters Patent, when granted, to said Assignee as the owner of the entire right, title, and interest in and to the same, for the sole use and behoof of said Assignee, its successors and assigns.

FURTHER, Assignors agree to communicate to said Assignee or its representatives any facts known to Assignors respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation, continuation-in-part, substitution, renewal, and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to said Assignee, make all rightful oaths and generally do everything possible to aid said Assignee, its successors and assigns, to obtain and enforce proper protection for said invention in the United States and in any and all foreign countries.

IN TESTIMONY WHEREOF, we have hereunto set our hands on the date appearing next to our signatures.

Witness:

Inventor:

Date:

John E. Stevens  
July 28, 2003

Cheree L. B. Stevens  
Cheree L. B. Stevens

July 28, 2003

\_\_\_\_\_  
Robert O. Roskam

ASSIGNMENT

WHEREAS, Cheree L. B. Stevens, residing at 200 Cobblestone Lane, Idaho Falls, Idaho 83404, and Robert O. Roskam, residing at 2760 Lake Drive SE, Grand Rapids, Michigan 49506, respectively (hereinafter referred to as Assignors), have invented certain new and useful improvements in EXTERNAL COATING COMPOSITION FOR TOASTER PASTRIES AND OTHER PASTRY PRODUCTS, for which an application for United States Letters Patent was executed on even date herewith.

WHEREAS, Advanced Food Technologies, Inc., a corporation of the state of Michigan, having a place of business at 2010 Jennie Lee Drive, Idaho Falls, Idaho 83404 (hereinafter referred to as Assignee), is desirous of acquiring the entire right, title, and interest in and to said invention and in and to any Letters Patent that may be granted therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, for good and valuable considerations, Assignors hereby sell, assign, and transfer unto said Assignee the full and exclusive right, title and interest to the said invention in the United States and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted therefor in the United States and in any and all foreign countries and in and to any and all divisions, reissues, continuations, continuation-in-part, and extensions thereof including the full right to claim for any such applications the benefits of the International Convention.

Assignors hereby authorize and request the Patent Office Officials in the United States and in any and all foreign countries to issue any and all of said Letters Patent, when granted, to said Assignee as the owner of the entire right, title, and interest in and to the same, for the sole use and behoof of said Assignee, its successors and assigns.

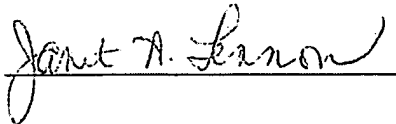
FURTHER, Assignors agree to communicate to said Assignee or its representatives any facts known to Assignors respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuation, continuation-in-part, substitution, renewal, and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to said Assignee, make all rightful oaths and generally do everything possible to aid said Assignee, its successors and assigns, to obtain and enforce proper protection for said invention in the United States and in any and all foreign countries.


IN TESTIMONY WHEREOF, we have hereunto set our hands on the date appearing next to our signatures.

Witness:

Inventor:

Date:

\_\_\_\_\_  


\_\_\_\_\_  
Cheree L. B. Stevens  
  
\_\_\_\_\_  
Robert O. Roskam

\_\_\_\_\_  
7-24-03